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9

10 UNITED STATES DISTRICT COURT
11 NORTHERN DISTRICT OF CALIFORNIA
12 SAN FRANCISCO DIVISION
13

14 FACEBOOK, INC.,

15 Plaintiff,

16 v.

17 POWER VENTURES, INC. a Cayman Island
corporation, STEVE VACHANI, an individual;
18 DOE 1, s/b/a POWER.COM, DOES 2-25,
inclusive,

19 Defendants.
20

Case No. 5:08-cv-05780-JW (JCS)

**DECLARATION OF MORVARID
METANAT IN SUPPORT OF
FACEBOOK, INC.'S MOTION TO
ENLARGE TIME FOR HEARING
DISPOSITIVE MOTIONS, PURSUANT
TO CIVIL L.R. 6-3 AND 16-2**

Dept: Courtroom 9, 19th Floor
Judge: Hon. Chief Judge James Ware

1 I, Morvarid Metanat, hereby declare and state as follows:

2 1. I am an attorney with the law firm of Orrick, Herrington & Sutcliffe LLP, counsel
3 of record to Facebook, Inc. in the above-captioned matter. I make this declaration based on my
4 personal knowledge, unless otherwise noted. If called, I can and will testify competently to the
5 matters set forth herein.

6 2. Attached hereto as **Exhibit A** is a true and correct copy of Facebook's First Set of
7 Requests for Production served on Defendant Power Ventures, Inc. on October 22, 2010.

8 3. Attached hereto as **Exhibit B** are true and correct copies of excerpts from the
9 July 20, 2011 deposition of Steve Vachani. **[LODGED UNDER SEAL—DESIGNATED**
10 **“HIGHLY CONFIDENTIAL—ATTORNEYS’ EYES ONLY” PURSUANT TO**
11 **PROTECTIVE ORDER]**

12 4. Attached hereto as **Exhibit C** are true and correct copies of excerpts from the
13 January 9, 2012 deposition of Power Ventures, Inc., taken pursuant to Federal Rule of Civil
14 Procedure 30(b)(6). **[LODGED UNDER SEAL—DESIGNATED “HIGHLY**
15 **CONFIDENTIAL—ATTORNEYS’ EYES ONLY” PURSUANT TO PROTECTIVE**
16 **ORDER]**

17 5. Attached hereto as **Exhibit D** is a true and correct copy of a May 31, 2011
18 correspondence between Defendants' counsel and Facebook's counsel.

19 6. On November 9, 2011, Defendants produced Vachani's personal Yahoo! email
20 account and an ASA hard drive in response to the Court's November 4, 2011 Order compelling
21 them to do so. Vachani's Yahoo! email account contained over 300,000 emails. Other than
22 Vachani's personal emails, this production did not include Power's former employee emails.

23 7. Attached hereto as **Exhibit E** is a true and correct copy of an August 26, 2011
24 correspondence between Facebook's counsel and Defendants' counsel.

25 8. Attached hereto as **Exhibit F** is a true and correct copy of a November 9, 2011
26 correspondence between Defendants' counsel and Facebook's counsel.

27 9. Attached hereto as **Exhibit G** are true and correct copies of transcript excerpts
28 from the November 4, 2011 hearing before the Honorable Magistrate Judge Spero.

1 10. Attached hereto as **Exhibit H** is a true and correct copy of a December 26, 2008
2 correspondence between Elmo Cruz and Eric Santos.

3 11. On January 25, 2012, five days after the close of discovery and over a year after
4 Facebook served Defendant Power with its discovery requests, Defendants produced a hard drive
5 containing 76,457 files, 5,752 folders and 74.6 Gigabytes of data. While still in the process of
6 verifying the contents of this recently produced hard drive, based on Facebook's cursory review,
7 Facebook has determined that the hard drive contains highly relevant Power employee emails.

8 **Efforts to Obtain Stipulation**

9 12. Given Defendants' untimely production of a hard drive on January 25, 2012,
10 Facebook requested that Defendants stipulate to an extension of time for filing dispositive
11 motions. Defendants refused.

12 **Harm to Facebook**

13 13. Facebook will suffer harm and prejudice if the Court denies its Request to Enlarge
14 Time. Defendants waited until after both parties' motions for summary judgment had been
15 briefed, and mere days before the deadline to file dispositive motions,¹ to produce a hard drive
16 that contains what appears to be highly relevant evidence. As a result, Facebook has been denied
17 the opportunity to use any of the evidence contained on the hard drive in its dispositive motion
18 briefing. Facebook also did not have the opportunity to inquire about the evidence contained on
19 the hard drive at the 30(b)(6) deposition of Defendant Power Ventures, Inc., on January 9, 2012.
20 Due to the untimely production of this hard drive, Facebook may be entitled to severe sanctions
21 against Defendants—including those of a dispositive nature. Facebook will require sufficient
22 time to conduct a thorough search of the contents of the hard drive to determine whether
23 Defendants did indeed improperly withhold relevant and responsive materials that could have
24 been used in support of Facebook's summary judgment motions and opposition, and whether
25 sanctions are warranted as a result. Because Defendants produced the hard drive in an archived,
26 compressed format, Facebook was unable to begin searching the hard drive upon receipt. Rather,

27 _____
28 ¹ As indicated in the accompanying administrative motion, the March 19, 2012 deadline to hear
dispositive motions requires that the parties' file all dispositive motions by February 13, 2012.

Facebook was forced to send the hard drive to a vendor to unpack and export the data on the hard drive so that it was accessible to conduct searches. Facebook also anticipates that most of this material is in Portuguese and will require translation. Given that the deadline for filing dispositive motions is just days away, Facebook will suffer unfair prejudice from Defendants' failure to comply with their discovery obligations if the Court were to deny its request for an extension to file dispositive motions.

Previous Time Modifications

14. This case schedule has been modified eleven times. The original Case Scheduling Order was filed December 12, 2008. The initial Case Management Conference in this case was scheduled for April 15, 2009. Subsequently, the Court rescheduled the Case Management Conference for April 17, 2009. Thereafter, the parties stipulated, and the Court ordered, to extend to the initial Case Management Conference to 45 days after the Court's ruling on the pending motion to dismiss. The Court subsequently rescheduled the Case Management Conference for January 29, 2010. The Court then rescheduled the Case Management Conference for August 20, 2010. The Case Management Conference was again rescheduled for August 23, 2010. Thereafter, the Court reset the Conference to August 24, 2010. On August, 19, 2010, the Court modified the original scheduling order. Subsequently on July 14, 2011, the Court modified the original scheduling order. On September 9, 2011 the Court again modified the original scheduling order. On November 28, 2011, the Court granted a stipulation modifying the summary judgment motion deadlines. On December 13, 2012, the Court vacated the pretrial conference and has not yet rescheduled the conference date.

Effect of Requested Modification

15. The proposed modification will have no effect on the case management schedule beyond changing the hearing date for dispositive motions, as set forth below:

Deadline	Current Schedule	Proposed Schedule
Close of all discovery	January 20, 2012	January 20, 2012
Last date for Hearing Dispositive Motions	March 19, 2012	April 18, 2012

1	(=60 days after the close of all discovery)		
2	Preliminary Pretrial Conference (=30 days	TBD	TBD
3	before the close of all discovery)		
4	*Per Dkt. No. 200, the Court will set another		
5	conference date in its Order addressing the		
6	parties' dispositive Motions.		
7	Preliminary Pretrial Conference Statements	TBD	TBD
8	(Due 10 days before conference)		
9	*Per Dkt. No. 200, the Court will set another		
10	conference date in its Order addressing the		
11	parties' dispositive Motions.		

12 I declare under penalty of perjury that the foregoing is true and correct to the best of my
 13 knowledge. Executed this 8th day of February, 2012 at Menlo Park, California.

14 By: /s/ Morvarid Metanat /s/
 15 MORVARID METANAT